

**ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of: _____)

Robertson Enterprises, Inc. _____)

Owner Account No. 17612 _____)

Oneonta, Blount County, Alabama _____)

**PROPOSED
ADMINISTRATIVE ORDER**

No. _____

PREAMBLE

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rpl.Vol.); the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rpl.Vol.); and the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code r.") promulgated pursuant thereto, the Alabama Department of Environmental Management (hereinafter the "Department" or "ADEM") makes the following FINDINGS:

STIPULATIONS

1. Robertson Enterprise, Inc. (hereinafter "the owner") is a regulated substance deliverer, designated as Owner Account Number 17612.
2. ADEM is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rpl.Vol.).
3. Pursuant to § 22-22A-4(n), Ala. Code (2006 Rpl.Vol.), ADEM is the State Environmental Control Agency for the purposes of federal environmental law, including 42 U.S.C. §§ 6991 to 6991(m), as amended.
4. ADEM is authorized to administer and enforce the provisions of the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rpl.Vol.).
5. Based upon an inspection dated August 26, 2009 of the UST facility and/or a review of facility records, the Department has documented the violations alleged herein.

6. Pursuant to ADEM Admin. Code r. 335-6-15-.45(3), upon implementation of delivery prohibition, it shall be unlawful for any regulated substance deliverer to deliver a regulated substance, and it shall be unlawful for owners and operators of UST systems to accept delivery of a regulated substance to an underground storage tank facility that is under delivery prohibition.

7. The owner, and regulated substance deliverer, delivered a regulated substance, eighteen times between June 10, 2009 and September 1, 2009 to an underground storage tank facility that was under delivery prohibition.

8. The regulated substance was delivered to Hilltop Grocery located at 21982 Hwy. 5 in Lynn, Alabama while they were on delivery prohibition. The facility ID No. of Hilltop Grocery is 22048-133-017928.

CONTENTIONS

Pursuant to § 22-22A-5(18)(c), Ala. Code (2006 Rpl.Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall be a separate violation.

In arriving at the civil penalty assessed in this matter, the Department has considered the following:

A. Seriousness of the Violation:

The Owner/Deliverer did not ensure that the facility was not on delivery prohibition. The violations impede the Department's regulatory authority over USTs for threats to public health, safety and the environment.

B. Standard of Care:

The Owner/Deliverer did not exhibit a standard of care commensurate with applicable regulatory requirements.

C. Economic Benefit Which Delayed Compliance May Have Conferred:

The Department has been unable to ascertain if there has been a significant economic benefit conferred on the Owner.

D. Efforts to Minimize or Mitigate the Effects of the Violation Upon the Environment:

There are no known environmental effects as a result of the alleged violations.

E. History of Previous Violations:

The Owner/Deliverer does have a history of previous violations.

F. Ability to Pay:

The Owner/Deliverer has not alleged an inability to pay the civil penalty.

ORDER

Based on the foregoing FINDINGS and pursuant to §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(12) and 22-22A-5(18), Ala. Code (2006 Rpl.Vol.), it is hereby ORDERED:

A. That, within forty-five days of the effective date of this Administrative Order, the Owner shall pay to the Department a civil penalty in the amount of Ten Thousand Dollars for the violations cited herein. Failure to pay the civil penalty within forty-five days of the effective date of this Administrative Order shall constitute cause for the Department to file a civil action in the Circuit Court of Montgomery County, Alabama. Payment shall be made by Cashier's Check or Money Order, payable to the Alabama Department of Environmental Management, and addressed as follows:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

B. That, should any provisions of this Administrative Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law, and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

C. That, except as otherwise set forth herein, this Administrative Order is not and shall not be interpreted to be a permit or modification of a permit under Federal, State or local law, and shall not be construed to waive or relieve the Owner of the obligation to comply in the future with all applicable law.

D. That the issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Owner of the violations cited herein.

E. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Owner for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this the _____ day of _____, 2009.

Onis "Trey" Glenn, III
Director